

# EXHIBIT A

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June 12, 2017

**Via e-mail only ([nswingos@hermescleveland.com](mailto:nswingos@hermescleveland.com))**

Mr. Nicholas Swingos  
Hermes Sports & Events, Inc.  
2425 West 11th St., #2  
Cleveland, Ohio 44113

**Re: St. Malachi Church Run**

Dear Mr. Swingos:

I represent St. Malachi Parish, a Catholic parish that has faithfully served the people of Cleveland for over 150 years. The parish forwarded your June 1, 2017 letter to me for response. As I explain more below, your statement that Hermes owns the “St. Malachi” name for the parish’s annual run is incorrect. St. Malachi Parish owns the rights to the St. Malachi name and the trademark rights to the phrases *St. Malachi Run* and *St. Malachi Church Run*.

St. Malachi Parish, located at 2459 Washington Ave., Cleveland, Ohio, was established in 1865. Since at least that time, the parish has used the St. Malachi name for the parish, the church, and the services and programs that it provides. Clevelanders recognize the St. Malachi name and correctly associate it with St. Malachi Parish. The parish’s usage of the St. Malachi name for over 150 years gives the parish ownership of the St. Malachi name in the Cleveland area, including trademark rights.

St. Malachi started the *St. Malachi Run* in 1980 as a way to raise funds for the parish’s ministry work. To the extent Hermes has used the St. Malachi name, it was only as the run organizer for the parish, in reference to the parish’s run, and with permission from the parish. The parish gave that permission because it was the parish’s run that involved and benefited the parish. Using St. Malachi’s name without permission and for a run that does *not* involve and benefit the parish would be confusing, deceptive, and a violation of the parish’s legal rights.

St. Malachi Parish will not be using Hermes as the organizer for next year’s run. St. Malachi Parish believes that it can raise more funding for the parish and its mission with a different run organizer. It, therefore, will not be granting Hermes any permission to use the St. Malachi name going forward, and it terminates any prior permission granted to Hermes.

Hermes’ unilaterally registering the phrases “St. Malachi Run” and “St. Malachi Church Run” with the state of Ohio, while troubling and bad faith conduct, does not give rise to any legal rights. Hermes had no legal right to file for them because it has no ownership rights in the St. Malachi name or those phrases. Those registrations, therefore, are invalid. Any unauthorized,

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future attempt by Hermes to use those phrases or the St. Malachi name would undoubtedly confuse and deceive the public into thinking that the run is a St. Malachi run that involves and benefits the parish and its charitable work. St. Malachi Parish cannot allow that to occur; it must protect its name and protect the community against unlawful confusion.

Therefore, St. Malachi Parish demands that Hermes agree to do the following:

1. Immediately cease and desist from using the phrases *St. Malachi Run*, *St. Malachi Church Run*, or any other use of the St. Malachi name or anything confusingly similar to it, including (without limitation) removal of the *St. Malachi Church Run* webpage at [www.hermescleveland.com/roadracing/Malachi](http://www.hermescleveland.com/roadracing/Malachi) and the destruction of any documents or tangible items (e.g., brochures, t-shirts, etc.) that display the St. Malachi name.
2. Acknowledge that St. Malachi Parish owns all trademark rights in the phrases *St. Malachi Run* and *St. Malachi Church Run*, agree to never use those phrases without St. Malachi Parish's written permission, and agree not to contest or otherwise challenge the parish's future use of the phrases or other phrases that incorporate the St. Malachi name in connection with runs or related activities.
3. Submit a written request to the secretary of state, in accordance with Ohio Rev. Code § 1329.08(A), cancelling the Ohio registrations for *St. Malachi Run* and *St. Malachi Church Run*.
4. Provide St. Malachi Parish with: (a) an accounting of all donations received or collected by Hermes on behalf of St. Malachi Parish in connection with the 2017 *St. Malachi Church Run*, including the name of each donor, their contact information, and amount of each donation, (b) the full amount of these donations within 10 business days of the date of this letter, and (c) the \$3,000.00 fee agreed upon for the 2017 *St. Malachi Church Run* within 10 business days after receipt of this letter.

It is the parish's desire to resolve this issue amicably, and we hope that Hermes shares this desire. To that end, we request that Hermes sign below and return this letter to me by no later than June 26, 2017.

Sincerely,



Matthew J. Cavanagh

cc: Rev. Anthony J. Schuerger, via e-mail [Fr.Tony.S@StMalachi.org](mailto:Fr.Tony.S@StMalachi.org)  
Neal Neroni

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Agreed to by:

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Signature

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Date

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Printed Name and Title